

\$~1

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9618/2017, CM No. 16412/2019

MS. SHILPI JAIN

..... Petitioner

Through: Mr. Ashok Arora, Adv.

versus

SOUTH MUNICIPAL CORPORATION OF DELHI AND ORS.

..... Respondents

Through: Mr. Puja Kalra, Adv. for R-1/SDMC  
Mr. Rohit Jain, Adv. with Gaurav  
Jain, Adv. for Reliance Infratech Ltd.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**ORDER**

%

**26.07.2019**

1. The present petition has been filed by the petitioner with the following prayers:

*“In the above circumstances, it is most respectfully prayed that this Hon’ble Court be pleased to:*

- (a) *Issue appropriate writs / order / directions in the nature of MANDAMUS directing the respondent –South MCD to remove the cellular tower installed on the terrace of the House No.11, Siri Fort Road, New Delhi;*
- (b) *Issue further appropriate writs / order / directions directing the respondents pay a sum of Rs.25,000 (Rupees Twenty Five Lacs only), or any other amount that this Hon’ble Court may deem just and reasonable in the facts and*

*circumstances of the case, towards exemplary damages to the petitioner, without prejudice to her rights to claim appropriate compensation against Respondents No.2 & 3 before an appropriate forum / court of competent jurisdiction.*

(c) *Award costs to the petitioner;*

*AND*

(d) *Pass such other orders / directions as deemed just and proper.”*

2. When the matter was listed on the first date i.e. October 31, 2017, it was represented on behalf of South Delhi Municipal Corporation that the subject tower was sealed on November 03, 2014 and it is not functional, therefore, the instant petition is without any cause of action. On January 03, 2018 it was represented on behalf of the petitioner that the tower installed on the terrace of the House No.11, Siri Fort Road, New Delhi be removed. It was also represented that the electricity connection be disconnected to make the tower dysfunctional. Since the disconnection was to be effected by BSES and the BSES was not a party, on oral request of the learned counsel for the petitioner BSES Rajdhani Power Ltd. was made a party. In terms of the amended memo of parties, the respondents to this petition are the South Delhi Municipal Corporation, Reliance Communication India, Dr. Arun Setia (owner of the property) and B.S.E.S. Rajdhani Power Ltd.

3. On March 14, 2018 a statement was made by the learned counsel for the BSES that as and when a communication is received from the concerned Corporation for disconnection of electricity, such a request shall be acceded

to. In fact, by giving a reference to communication dated November 27, 2017, he had stated that the electricity to the tower shall be disconnected within two days.

4. A CM 16412/2019 was filed by the petitioner seeking the following relief:

*“It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to: -*

- a) Be directed to pay Rs.16,500/- towards cost of radiation test and shielding;*
- b) Pass such other or further orders as this Hon'ble Courts deems fit and proper in the facts and circumstances of the case and in the interest of justice.”*

5. It was the case of the petitioner in the said application that despite a statement made by the learned counsel for the BSES to disconnect the electricity to mobile tower within two days, the same has not been done. It is her case that she has found the tower operating thereafter. She got the mobile tower radiation audit by Government Company whose report shows radiation in her house / bed room. She has placed on record the measurement details at page 104 of the paper book.

6. She has also filed a CM 20536/2019 wherein she has reiterated her prayer because of the radiation reports filed by her earlier, the tower be directed to be removed. On May 21, 2019 the learned counsel appearing for the respondent No.2 Company has stated before the Court that the respondent No.2 is before the NCLT which had appointed an Interim Resolution Professional. Noting the said submission, notice was directed to be issued to the Interim Resolution Professional.

7. On July 01, 2019 Mr. Rohit Jain, Advocate who also appears for the respondent No.2 has stated before the Court about the change in the Interim Resolution Professional. He was directed to take instructions from the professional. Mr. Jain has taken instructions from the professional, as per his instructions the tower cannot be removed because of moratorium and that apart the removal of the tower shall dilute the asset of the Company. I may state here a reply has also been filed by the respondent No.3 the owner of the property on which the tower has been constructed.

8. The respondent No.3 has stated that the Cellular Tower has already been sealed by the SDMC on January 04, 2014 and further electricity supply has been disconnected on March 15, 2018 by BSES. He also stated that the respondent No.2 Company has defaulted in payment of rent for past one year *in lieu* of installation / establishment of the Cellular Tower. In this regard, he has instructed to remove the said Cellular Tower from his property as the same has been sealed and no purpose is being served from the said tower.

9. Mr. Arora, learned counsel for the petitioner state that despite sealing of the tower / disconnection of the electricity power, if the tower is emitting radiation, it is a serious issue which will have repercussion on the health of the persons living in the vicinity. Hence, the tower needs to be removed.

10. Having heard the learned counsel for the parties, this Court is of the view that noting the measurement details filed by the petitioner to contend that the radiation is still being emitted by the tower, appropriate shall be to get the tower itself removed / dismantled. This I say so, even the case of the owner of the property i.e. respondent No.3 is that the tower should be removed. The plea of Mr. Jain on behalf of the IRP that there is moratorium

and removal of the tower shall dilute the asset of the company is not at all appealing for the simple reason when the owner of the property does not himself want the tower to be existing, the IRP cannot insist upon the tower to remain installed at the property. Further when the radiation is being emitted by the tower there is no reason why the tower is not directed to be removed.

11. Hence, it is directed that the IRP shall get the tower, installed at House No.11, Siri Fort Road, New Delhi, removed and preserve the same as an asset of the company at an appropriate place at his discretion. This direction shall be carried out within a period of two months from today. With this direction, as the prayer 'a' of the writ petition has been granted, I deem it appropriate to dispose of the writ petition. Ordered accordingly. No costs.

**CM No. 16412/2019**

Dismissed as infructuous.

**V. KAMESWAR RAO, J**

**JULY 26, 2019/aky**